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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/687,534

Filing Date: October 15, 2003

Appellant(s): KONDRK ET AL.

C. Douglass Thomas
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 21, 2012 appealing from the Office action
mailed June 17, 2011.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-32, 34-46 and 50 are pending, rejected, and being appealed.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

NEW GROUND(S) OF REJECTION

NEW GROUNDS OF REJECTION

Claims 21 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galuten et al in view of Atkinson (5,551,112).

As per claim 21, Glauten et al teach compressed audio files (see at least column 3, lines 40-55) and digital signature for the image file for artwork associated with the media collection (see at least column 12, line 15, column 33, lines 24-28) but fails to explicitly teach wherein the digital signature for the image file for artwork associated with the media collection is a MD5 message digest, and wherein the digital signatures for the compressed audio files are MD5 message digests. Although the reference does not explicitly teach the concept and advantage of using MD5 message digests signatures, the examiner takes the position that this is a very well known expedient in the art. With that said, attention is directed to Atkinson (US 5,551,112, see at least column 12, lines 15-17) which teaches this very well known feature. It would have been obvious to one of ordinary skill in the art to include this well-known feature taught by Atkinson in Galuten because doing so would be a simply an addition of a well-known element with Gluten et al that would have led to predictable and well known results. One of ordinary skill in the art would have recognized that applying this well-known feature to Galuten et al would have yielded predictable results in an improved system by using the advantages of an MD5 message digests.

Claim 41 contains similar limitations as claim 21 and therefore is rejected under the same rationale.

Claims 22 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galuten et al in view Atkinson, as applied to claims 21 and 41 above, and further in view of Marsh (7,073,193).

As per claim 22, Galuten et al. in view of Atkinson teach wherein the markup language file is an XML file (see at least Galuten, column 29, line 61), but fails to explicitly teach wherein the image file is a JPEG file, and the compressed audio files are MPEG4 based. Although the references do not explicitly teach the concept and advantage of a JPEG file and MPEG4, the examiner takes the position that this is a very well known expedient in the art. With that said, attention is directed to Marsh (US 7,073,193, see at least column 6, lines 35-48, column 51, lines 25-37) which teaches this very well known feature. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to include these features taught by Marsh in Galuten et al. in view of Atkinson because doing so would allow for the media file to be efficiently communicated via the Internet.

Claim 42 contains similar limitations as claim 22 and therefore is rejected under the same rationale.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

7,209,892	Galuten et al	4-2007
7,073,193	Marsh	7-2006
2003/00744565	Tang et al	4-2003

6,085,253 Blackwell et al 7-2000
5,511,122 Atkinson 4-1996

"Official Notice"

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-6, 11-13, 16, 18, 23-29, 31-32, 34, 36, 39-40, 44-46, and 50 are rejected under 35 U.S.C. 102(e) as being anticipated by Galuten et al (US Patent 7,209,892).

3. As per claim 1, Galuten et al teach a method for submission of a media collection from a client machine to a media distribution server machine, said method comprising:

obtaining metadata for the media collection (see at least column 3, lines 8-15, 41-50; **metadata is provided**):

identifying media content for a plurality of media items to be included in the media collection, the media content being imported from a media source, each of the media items

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including a different audio track (**see at least column 3, lines 41-50; album including a plurality of songs to form a collection/album**);

converting the identified media content for the plurality of media items into compressed media files, said converting encodes the media content for each of the media items into a compressed audio format (**see at least column 3, lines 50-52; every content element is compressed**);

obtaining metadata for the identified media content (**see at least column 3, lines 8-15, 41-50**);

forming, at the client machine, an electronic package of the media collection (**see at least column 3, lines 41-50; album including a plurality of songs to form a collection/album**), the electronic package including at least the compressed media files and the metadata associated with the media collection and the identified media content (**see at least column 3, lines 50-52; every content element is compressed**); and

thereafter electronically transmitting the electronic package from the client machine to the media distribution site, thereby submitting the media collection to the media distribution site for subsequent distribution (**see at least column 3, lines 55-61, column 6, lines 40-66, abstract, production system receives content and provides mechanism for distribution**).

wherein the electronic package of the media collection comprises a plurality of electronic files, one of the electronic files is a markup language file containing at least the metadata, another of the files is an image file for artwork associated with the media collection, and a plurality of other of the files are compressed audio files, wherein the metadata provided for the media collection includes at least media collection metadata as well as media item metadata, the media item metadata being provided for each of the media items within the media collection (**see at least column 3, lines 6-55, column 29, line 50-column 30, line 45**); and wherein the

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electronic package further includes a digital signature for each of the compressed audio files, and includes a digital signature for the image file (**see at least column 12, line 15**).

4. As per claim 2, Galuten et.al teach wherein the metadata for the media collection obtained includes at least descriptive media collection information (**see at least column 3, lines 8-11**).

5. As per claim 3, Galuten et al teach wherein the descriptive media collection information includes, for the media collection, at least a title, an artist, a genre, a label name, copyright information, release information, and a numerical identifier (**see at least column 3, lines 8-11, 41-46**).

6. As per claim 4, Galuten et al teach wherein the descriptive media collection information further includes an image to be used as artwork for the media collection (**see at least column 3, lines 8-11, 41-46**).

7. As per claim 5, Galuten et al teach wherein the metadata for the media collection is entered by a user (**see at least column 3, line 11-14**).

8. As per claim 6, Galuten et al teach wherein the audio tracks pertain to songs, and wherein said converting encodes the media content for each of the songs into a compressed audio format (**see at least column 3, lines 41-52**).

9. As per claim 11, Galuten et al teach wherein at least one of the media items is a multimedia item (**see at least column 3, lines 10-11**).

10. As per claim 12, Galuten et al teach wherein the metadata for the identified media content includes at least descriptive media item information for each of the media items of the identified media content (**see at least column 3, lines 8-11, 41-46**).

11. As per claim 13, Galuten et al teach wherein the descriptive media item information includes, for the corresponding media item, at least a title, an artist, a genre, track number, a

label name, copyright information, and a numerical identifier (**see at least column 3, lines 8-11, 41-46**).

12. As per claim 16, Galuten et al teach wherein the metadata for the identified media content is entered by a user (**see at least column 3, line 11-14**).

13. As per claim 18, Galuten et al teach wherein a second portion of the metadata for the identified media content is entered by a user (**see at least column 3, lines 8-11, 41-46**).

14. As per claim 23, Galuten et al teach wherein said transmitting operates to electronically transmit the electronic package to the media distribution site over the Internet (**see at least abstract**) using encryption (**see at least column 3, line 51**).

15. As per claim 24, Galuten et al teach wherein said method further comprises: receiving the electronic package at the media distribution site; parsing the electronic package to retrieve components from the electronic package, the components including at least the identified media content in the compressed media format, the metadata for the media collection and the metadata for the at least one media item; and storing the components into a media distribution database (**see at least column 3, lines 40-61, column 30, lines 10-40**).

16. As per claim 25, Galuten et al teach wherein said method further comprises: rendering the media collection and the media items thereof available for online purchase at the media distribution site (**see at least column 7, lines 1-4, column 8, lines 39-53, 66-67**).

17. As per claim 26, Galuten et al teach wherein said method further comprises: rendering the media collection and the media items thereof available for online purchase at the media distribution site (**see at least column 7, lines 1-4, column 8, lines 39-53, 66-67**).

18. As per claim 27, Galuten et al teach wherein said method is performed by an application program (**see column 6, lines 41-66**).

19. As per claim 28, Galuten et al teach wherein, when the application program performs said obtaining of the metadata for the media collection and said obtaining of the metadata for the identified media content, a user interacts with the application program (**see column 6, lines 41-66**).

20. As per claim 29, Galuten et al teach wherein the user is a representative for an independent recording label, and wherein said application program facilitates the independent recording label in submission of the media collection to the media distribution site for subsequent online distribution (**see at least column 3, line 14**).

21. As per claim 39, Galuten et al teach wherein the media distribution site is an online media distribution site (**see at least abstract**).

22. Claims 31-32, 34, 36, 40, 44-46, and 50 contain similar limitations as claims 1, 5-7, 12, 21, 23, 25 and 29 and are therefore rejected under the same rationale.

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. Claims 14, 17, 19, 35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galuten et al.

25. As per claims 14, 19, and 37, although Galuten et al teach that the distributor provides business rules along with every song or unit of musical content it provides to the system, which

include the price range, condition of sale and duration of offer (see at least column 3, lines 25-29) Galuten et al fail to explicitly teach wherein the metadata for the identified media content includes an *indication as to whether the identified media content is available for sale*. However, it would have been obvious to one of ordinary skill in the art to modify the teaching of Galuten et al to include such feature because doing so would allow for an artist to authorize the sale of the content by entering the information as descriptive data.

26. As per claim 17, Galuten et al fail to explicitly teach wherein a *first portion of the metadata for the identified media content is obtained from the metadata for the media collection*. However, it would have been obvious to one of ordinary skill in the art to include this feature in Galuten et al because doing so would create a way to associate the media with the media file in Galuten et al by associating the metadata such as including the title of the media file in the title of the media.

27. As per claim 35, Galuten et al fail to teach wherein *the media source is a compact disc*. However, it would have been obvious to one of ordinary skill in the art to include this feature in Galuten et al because doing so would allow an artist to upload his music to the content manager directly from a compact disc.

28. Claims 7-10, 30, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galuten et al in view of "Official Notice" with evidence provided by Tang (US2003/0074465) and Blackwill (US 60852531) for claims 30 and 43 respectively.

29. As per claims 7-10, Galuten et al fails to explicitly teach wherein the compressed audio format is MPEG based, MPEG4 based, Advanced Audio Coding (AAC), MP4, M4 or M4a.

However, "Official Notice" is taken that the concept and advantages of such formats are well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to include any one of these audio formats in Galuten et al because doing so would allow for the media files to be efficiently communicated via the Internet (see **paragraph [0005] of Applicant's specification**).

The Applicant has not adequately traversed the Official Notice taken in the previous action. "*To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.*" MPEP 2144.03c. **The common knowledge or well-known in the art statement is taken to be admitted prior art because the traverse was inadequate. MPEP 2144.03c**

30. As per claim 30, Galuten et al fail to teach determining whether the electronic package should be transmitted or queued; queuing the electronic package when said determining determines that the electronic package should be queued; and transmitting the electronic package to the media distribution site when said determining determines that the electronic package should be transmitted. However, "Official Notice" is taken that the concept and advantage of determining whether to transmit or queue data and queuing a transmission until transmission is possible is well known in the art as evidenced by Tang et al (US 2003/0074465) and Blackwell et al (US 6,085,253). It would have been obvious to one of ordinary skill in the art to include this feature in Galuten et al because doing so would allow data file to be queued when the server or the bandwidth is unavailable for uploading the data file. The Applicant has not adequately traversed the Official Notice taken in the previous action. "*To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is*

not considered to be common knowledge or well-known in the art." MPEP 2144.03c. The common knowledge or well-known in the art statement is taken to be admitted prior art because the traverse was inadequate. MPEP 2144.03c

31. Claim 43 contains similar limitations as claim 30 and therefore is rejected under the same rationale.
32. Claims 15, 20, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galuten et al in view of Marsh (US 7,073,193).
33. As per claim 15, Galuten et al fail to *explicitly* teach wherein the descriptive media item information further includes a *parental advisory*. However, in the same field of endeavor, Marsh teaches where the metadata for media content such as songs (**column 2, lines 30-32**) can be censor parental ratings (**see column 84, lines 11-20, fig 22**). It would have been obvious to one of ordinary skill in the art to combine the features of Marsh with Galuten et al because doing so would notify customers of the nature of the media content.
34. As per claim 20, Galuten et al fail to *explicitly* teach *wherein the metadata for the imported media content includes a parental advisory*. However, in the same field of endeavor, Marsh teaches that metadata for media content such as songs (**column 2, lines 30-32**) can include censor parental ratings (**see column 84, lines 11-20, fig 22**). It would have been obvious to one of ordinary skill in the art to combine the features of Marsh with Galuten et al because doing so would notify customers of the nature of the media content.
35. As per claim 38, Galuten et al fail to *explicitly* teach wherein the metadata for the identified media content includes a *parental advisory indication*. However, in the same field of endeavor, Marsh teaches that metadata for media content such as songs (**column 2, lines 30-32**) can include censor parental ratings (**see column 84, lines 11-20, fig 22**). It would have

been obvious to one of ordinary skill in the art to combine the features of Marsh with Galuten et al because doing so would notify customers of the nature of the media content.

NEW GROUNDS OF REJECTION

Claims 21 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galuten et al in view of Atkinson (5,551,112).

As per claim 21, Glauten et al teach compressed audio files (see at least column 3, lines 40-55) and digital signature for the image file for artwork associated with the media collection (see at least column 12, line 15, column 33, lines 24-28) but fails to explicitly teach wherein the digital signature for the image file for artwork associated with the media collection is a MD5 message digest, and wherein the digital signatures for the compressed audio files are MD5 message digests. Although the reference does not explicitly teach the concept and advantage of using MD5 message digests signatures, the examiner takes the position that this is a very well known expedient in the art. With that said, attention is directed to Atkinson (US 5,551,112, see at least column 12, lines 15-17) which teaches this very well known feature. It would have been obvious to one of ordinary skill in the art to include this well-known feature taught by Atkinson in Galuten because doing so would be a simply an addition of a well-known element with Gluten et al that would have led to predictable and well known results. One of ordinary skill in the art would have recognized that applying this well-known feature to Galuten et al would have yielded predictable results in an improved system by using the advantages of an MD5 message digests.

Claim 41 contains similar limitations as claim 21 and therefore is rejected under the same rationale.

Claims 22 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galuten et al in view Atkinson, as applied to claims 21 and 41 above, and further in view of Marsh (7,073,193).

As per claim 22, Galuten et al. in view of Atkinson teach wherein the markup language file is an XML file (see at least Galuten, column 29, line 61), but fails to explicitly teach wherein the image file is a JPEG file, and the compressed audio files are MPEG4 based. Although the references do not explicitly teach the concept and advantage of a JPEG file and MPEG4, the examiner takes the position that this is a very well known expedient in the art. With that said, attention is directed to Marsh (US 7,073,193, see at least column 6, lines 35-48, column 51, lines 25-37) which teaches this very well known feature. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to include these features taught by Marsh in Galuten et al. in view of Atkinson because doing so would allow for the media file to be efficiently communicated via the Internet.

Claim 42 contains similar limitations as claim 22 and therefore is rejected under the same rationale.

(10) Response to Argument

Argument A: *Galuten is done for distribution of the content elements not for submission to a media distribution site. Galuten is not concerned with submission of electronic packages to an online distribution site. Galuten et al teaches away from the inventive submission method of claim 1.*

In response, the Examiner respectfully disagrees. Galuten et al is directed to the same concept as the Appellant's invention and does not teach away. Galuten et al's system allows for

content owners such as artist and distributors to send their content (such as music, album with songs, etc.) to the system via the Internet for distribution (**see at least abstract, column 2, lines 3-24, fig 2, column 3, lines 4-15 and 41-55, column 6, lines 40-66**).

Argument B: *Galuten et al does not teach or suggest providing metadata for a media collection that includes at least media collection metadata as well as media item metadata for each of the media items within the media collection.*

In response, the Examiner respectfully disagrees. Galuten et al teach that content description and search terms are prepared during the submission of the content by the content owner to the system. Some of the metadata includes information such as titles, artists, producers, and promotional material (**see at least column 6, lines 45-50, column 3, lines 7-15, 40-47**).

Argument C: *Galuten et al does not teach or suggest use of a digital signature in electronic package for each of the compressed audio files, and also including a digital signature for the image file.*

In response, the Examiner respectfully disagrees. Galuten et al teaches that every content element is compressed and digitally secured (**see at least column 3, lines 50-55**) and uses digital signatures to secure the content (**see at least column 12, lines 15-21**).

Argument D: *Regarding claim 13, Galuten et al. fail to teach providing descriptive media item information that includes at least a title, an artist, a genre, track number, a label name, copyright information, and a numerical identifier. For example, nothing at col. 3 of*

Galuten et al. teaches or suggests providing descriptive media item information that includes, among other things, a track number and a numerical identifier.

In response, the Examiner respectfully disagrees. Galuten et al's system allows for content owners such as artist and distributors to submit their content (such as music, album with songs, etc.) to the system via the Internet for distribution. Galuten et al teach that content description and search terms are prepared during the submission of the content by the content owner to the system. Some of the metadata includes information such as titles, artists, producers, and promotional material. The distributor also prepares rendition data such as sequence of playing songs (see at least column 6, lines 45-55, column 3, lines 7-15, 40-47). Galuten et al in column 21, lines 52-56 further teaches that song tracks are identified by track numbers in an album when they are played by the consumer player.

Argument E: *Regarding claims 21 and 41, there is also no teaching or suggestion for use of MD5 message digests for the digital signatures. Therefore, for at least these additional reasons, it is submitted that claim 21 is further patentably distinct from Galuten et al.*

This argument is addressed in the new grounds of rejection above.

Argument F: *Regarding claim 24, the cited portions of Galuten et al. do not teach or suggest processing of an electronic package to retrieve components therefrom and then store the retrieved components into a media distribution database. Therefore, for at least these additional reasons, it is submitted that claim 24 is further patentably distinct from Galuten et al.*

In response, the Examiner respectfully disagrees. Galuten et al's system allows for content owners such as artist and distributors to submit their content (such as music, album with songs, etc.) to the system via the Internet for distribution. The distributor or content owner assembles content elements such as audio; video, image, and text into a package that is sent to and stored at the system (**see at least column 6, line 40-ccolumn 7, line 10, column 4, lines 7-55**).

Argument G: *Regarding claim 32, the Examiner rejected claim 32 under "similar rationale" as other claims with similar limitations. However, none of the other claims mentioned include similar limitations as does claim 32. Therefore, it is submitted that the rejection of claim 32 does not amount to a *prima facie* rejection*

In response, the Examiner respectfully disagrees. Claim 32 recites "*wherein the electronic package comprises a folder including the plurality of electronic files*". The term folder is taken broadly as a file that contains sub files. Galuten et al's system allows for content owners such as artist and distributors to submit their content (such as music, album with songs, etc.) to the system via the Internet for distribution. The distributor or content owner assembles content elements such as audio, video, image, and text into a package that is sent to and stored the system (**see at least column 6, line 40-ccolumn 7, line 10, column 4, lines 7-55**). The package is taken as the folder which contains the electronic files (audio, video, images, text).

Argument H: *(iii) Galuten et al. does not teach or suggests a folder of files for a media collection.*

In response, the Examiner respectfully disagrees. Galuten et al's system allows for content owners such as artist and distributors to submit their content (such as music, album with

songs, etc.) to the system via the Internet for distribution. The distributor or content owner assembles content elements such as audio, video, image, and text into a *package* that is sent to and stored the system (see at least column 6, line 40-column 7, line 10, column 4, lines 7-55). The term folder is taken broadly as a file that contains sub files. The *package* is taken as the folder which contains the electronic files (audio, video, images, text).

Argument I: *In rejecting claims 14, 19, and 35, the Examiner improperly relied on a general, unsupported conclusion that the limitations of claim 14 would be obvious.*

The Examiner pointed to nothing in Galuten et al. that teaches or suggests "the descriptive media item information further includes an indication as to whether the identified media content is available for sale." As an example, col. 30, lines 10-40 of Galuten et al. provides descriptive information for a song object, but nowhere in the descriptive information is there any teaching or suggest for anything therein that could serve as "an indication as to whether the identified media content is available for sale."

In response, the Examiner respectfully disagrees. Galuten et al teach that the distributor provides business rules along with every song or unit of musical content it provides to the system, which include the price range, condition of sale and duration of offer (see at least column 3, lines 25-29). Galuten et al fail to explicitly teach wherein the metadata for the identified media content includes an *indication as to whether the identified media content is available for sale*. However, it would have been obvious to one of ordinary skill in the art to modify the teaching of Galuten et al to include such feature because doing so would allow for an artist to authorize the sale of the content by entering the information as descriptive data in order to inform the customer of the items availability for purchase.

Argument J: Rejections Improperly Rely on Official Notice; Appellants have seasonably challenged, Examiner has not provided evidentiary support for Official Notice,
Rejections Improperly Rely on Official Notice,

In response, the Examiner asserts that the Applicant has not adequately traversed the Official Notice taken in the previous action. "To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art." MPEP 2144.03c. The common knowledge or well-known in the art statement is taken to be admitted prior art because the traverse was inadequate. MPEP 2144.03c. The Applicant made a general statement *seasonably challenging the taking of Official Notice* but has not specifically pointed out the supposed errors and has not stated why each noticed fact is not considered common knowledge or well-known in the art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of

the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) Reopen prosecution. Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Ramsey Refai/

Primary Examiner, Art Unit 3627

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Greg Vidovich/

Director, Technology Center 3600

Conferees:

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627

/Vincent Millin/
Appeals Conference Specialist